

Court No. - 8

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE
No. - 238 of 2024

Applicant :- Kripa Shankar And Another

Opposite Party :- Yadunandan (Died) Thru. 1/1. Faurav @
Shiv Bihari And 1/2. Saurabh @ Ram Bihari And 3 Others

Counsel for Applicant :- Agendra Sinha

Hon'ble Jaspreet Singh,J.

Heard learned counsel for the review applicant.

By means of the instant review application, the review petitioner's, seek to assail the judgment dated 31.05.2024 and correction order dated 03.07.2024 passed in Writ B no.1329 of 1981.

The said review petition is accompanied by an application seeking condonation of delay.

Submissions of learned counsel for the review petitioner's Sri Rakesh Kumar appearing under the authority of Sri Agendra Sinha is that against the order dated 31.05.2024, the review petitioners had approached the Apex Court wherein in Special Leave Petition (Civil) Diary No.28484 of 2024, the Apex Court declined to interfere with the judgment passed by the High Court. However, it was noticed that the dismissal of the said SLP will not stand in the way of filing an application to review/recall. It is urged that it is in furtherance of the liberty granted by the Apex Court the instant review petition has been filed.

It is also urged by the learned counsel for the review petitioners that earlier the review petitioners had filed an application for recall dated 05.09.2024, however, this fact has not been indicated in the memo of review but he points out that in paragraph-8 of the affidavit filed in support of the application seeking condonation of delay, it has been indicated that the review petitioners had filed a recall application and it was moved prior to the order passed by the Apex Court. In this context the instant review application has been filed.

It was put to the counsel for the review petitioners as to what is the outcome of the said recall application and the fact whether the review petitioners had filed recall application was indicated

and informed to the Apex Court, to which, he submits that he has no instructions in this regard.

Be that as it may, the fact remains that first and foremost, the counsel who has filed the instant review petition had not argued the matter nor he was the counsel when the main petition was argued and decided.

In light of the decision of the Apex Court in **Tamil Nadu Electricity Board vs Raju Reddiar; AIR 1997 SC 1005**, a review petition at the behest of the counsel who did not argue, the main petition cannot be countenanced especially when the counsel who had argued the main petition is neither appearing alongwith the counsel who filed the review application.

Even otherwise, considering the grounds which have been raised by the review petitioners, it appears that the review petitioners are attempting to seek rehearing on merits in the garb of review petition.

The scope of the review has been considered by this Court as well as the Apex Court. The Apex Court in **Shri Ram Sahu (Dead) Through Lrs vs Vinod Kumar Rawat; (2021) 13 SCC 1** has noticed the principles of review which are being reproduced hereinafter:

"35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial

order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

Recently, the Apex Court once again in **Sanjay Kumar Agarwal vs State Tax Officer; (2024) 2 SCC 362** has noticed the scope of review and the same reads as under:-

16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review."

Having taken note of the aforesaid, the grounds contained in the memo of review application as well as the judgment dated 31.05.2024 and corrected order dated 03.07.2024, there does not appear to be any cogent ground, upon which, the review can be entertained as no error apparent on the face of the record has been established.

In so far as the issue regarding condonation of delay is concerned, this may not detain the Court for long in as much as in a writ petition, where there is no issue of limitation and the review of an order/judgment passed under Article 226 of the

Constitution which is governed by the Rules of the High Court, 1952 also does not provide for any specific period of limitation and this aspect has been considered by this Court in case of **Mohd. Jahan Begum vs Board of Revenue; (2016) 133 RD 470.**

Considering the aforesaid, this Court does not deem necessary to issue notice on the application for condonation of delay.

Even if at all, the issue of delay/laches is ignored even then this Court finds that the grounds sought to be raised were always available to be argued when the petition was heard on merits, hence, this Court is unable to persuade itself to entertain the review petition, which for all the aforesaid reasons is **dismissed.**

Order Date :- 20.12.2024

Harshita